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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2575 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BHIKHUBHAI CHHIMUBHAI PATEL BROTHER OF DETENU

Versus

COMMISSIONER OF POLICE

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Appearance:

MR NM KAPADIA for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police Surat City, Surat passed an order in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act 1985 (for short PASA Act) on 21-3-1999 detaining one

Vithalbhai Chhimubhai Patel of village Jiyav of Choryasi Taluka of District Surat under the provisions of PASA Act. The grounds of detention indicate that the detaining authority took into consideration the two offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration the statements of two witnesses whose identity has not been disclosed in exercise of powers under Section 9(2) of the PASA Act. While exercising the powers the detaining authority has recorded its subjective satisfaction for the need for exercise of such powers on the ground that the averments made in the statements and the fear expressed by the witnesses are correct and genuine. After considering the possibility of resorting to less drastic alternative remedy the detaining authority came to the conclusion that the detention under PASA Act was necessary in order to immediately prevent the petitioner detenu from pursuing his illegal and antisocial activities.

2. The petition is preferred by the brother of the detenu Bhikubhai Chhimubhai Patel. The main grievance is that the detaining authority had not applied its mind for exercising the powers under Section 9(2) of the PASA Act, which has resulted into infringement of the right of the detenu by making an effective representation. Mr. Kapadia learned advocate appearing for the petitioner has restricted his arguments to the above ground alone, and has relied on the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659 and submitted that the petition may be allowed.

3. Mr. H.H. Patel learned advocate has opposed this petition. He submitted that vigilance and quick action on the part of the detaining authority may not be taken as non application of mind.

4. In this regard what transpires is that the statements were verified by the detaining authority on 21-3-1999 and the order was passed on that very day. While doing so the authority recorded subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act.

When an authority exercises powers under Section 9(2) of the PASA Act it has to undertake an exercise of satisfying itself about the correctness and genuineness of the fear expressed by the witnesses. For this purpose it is required to be assessed from the material before it and the statements of the witnesses in this regard. The authority has to consider that exercise of this power

would have direct bearing on the right of the detenu of making an effective representation. The authority has therefore to strike a balance between the right of the detenu of making a representation on one hand and the public interest on the other. This responsible task is to be performed by the authority after a careful consideration of the material. This would definitely require time. The affidavit-in-reply is filed. The authority has not clarified as to when the proposal was received, at what point of time the statements were verified, what material was considered for exercise of powers under Section 9(2) of the PASA Act, when the orders were prepared and passed. All this exercise was done in one day and in absence of any material coming forward from the detaining authority in form of affidavit in reply, this court is at loss to appreciate as to how the responsible task as stated above was carried out by the detaining authority. In this regard a decision in the case of K.C. Kahar v. State of Gujarat as reported in 1993(2) GLR 1659 may be profitably employed in service. In view of the above decision and facts of the present case, the petition deserves to be allowed on this ground alone.

5. The petition therefore deserves to be allowed and the same is hereby allowed. The detenu Vitthalbhai Chhimubhai Patel of Jiyav, Taluka Choryasi, District : Surat be set liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)